

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ENGELHARD CORPORATION,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 05-11241-JLT

(Electronic filing)

**UNITED STATES' *UNOPPOSED* MOTION TO
AMEND BRIEFING SCHEDULE FOR MOTIONS
ADDRESSING PLAINTIFF'S FOURTH CAUSE OF ACTION**

Defendants United States of America, et al. (“United States”) hereby respectfully move the Court for an order amending the briefing schedule pertaining to motions addressing Engelhard’s Fourth Cause of Action. Specifically, the United States’ opposition brief is due September 22, 2006, and the United States seeks to extend the time to file its brief by **one week — to and including September 29, 2006.** This motion is not opposed by Plaintiff Engelhard Corporation. The motion proposes to extend the filing date for Engelhard’s opposition brief by the same amount of time as requested by the United States. In support of this motion, the United States represents the following:

1. At the close of the April 26, 2006 hearing regarding the United States' motion for partial dismissal, the Court requested that the parties prepare a joint briefing schedule for motions that would address the validity of Engelhard's Fourth Cause of Action. The Fourth Cause of Action is a claim for contribution pursuant to CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B).

2. The question whether a particular administrative settlement is sufficient to give rise to a right of contribution under Section 113(f)(3)(B) is one that has traditionally received little attention by litigants and courts. Thus, the preparation of the parties' motions on this issue requires especially careful research, drafting, review, and coordination.

3. Undersigned counsel for the United States recognizes that a considerable period of time has passed since the Court approved the parties joint briefing schedule, and that this motion is the third request for an extension of time. Two previous extensions were sought in part because undersigned counsel was solely responsible for preparing a complex and time-consuming brief in the First Circuit, in a consolidated cases arising under the Clean Water Act. That brief was filed on September 6, 2006. Since that date, undersigned counsel has been engaged in the drafting and editing of the United States' opposition brief in this case. However, additional time is needed to ensure appropriate review, coordination, and approval of the brief among a number of federal agencies. In particular, the United States' opposition brief must be reviewed by, among other agencies, the U.S. EPA, the agency that is chiefly responsible for administering CERCLA. One additional week of time is needed for this purpose. (This motion proposes to move the date for the parties' reply briefs back by 9 days — rather than only one week — because undersigned counsel will be on previously-scheduled personal travel from October 5 through October 11, 2006.)

4. The extension of time sought through this motion is not intended to delay this case, and it will not substantially delay this case, particularly since the resolution of validity of Engelhard's CERCLA Section 113(f)(3)(B) claim will clarify, and potentially simplify the scope of the parties' discovery efforts.

5. The proposed revised briefing schedule is as follows:

<u>Party/Brief</u>	<u>Current Filing Date</u>	<u>Revised Filing Date</u>
Parties' Opposition Briefs (35 pgs.)	September 22, 2006	September 29, 2006
Parties' Reply Briefs (10 pgs.)	October 4, 2006	October 13, 2006

In conclusion, for the foregoing reasons, the Court should approve the joint motion to amend the briefing schedule and format regarding Engelhard's Fourth Cause of Action.

SO ORDERED this _____ day of September 2006.

The Honorable Joseph L. Tauro
United States District Judge

Respectfully submitted,

September 19, 2006

/s/ Stephen E. Crowley
STEPHEN E. CROWLEY
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986
Stephen.Crowley@usdoj.gov
(202) 514-0165

Attorney for the United States

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September 2006, I served a true and correct copy of the foregoing Motion on the following counsel of record, by ECF filing, as follows:

Ronald L. Kuis
12 Scenery Road
Pittsburgh, PA 15221
rlkuis@aol.com

Paul R. Mastrocola
David P. Rosenblatt
Burns & Levinson
125 Summer Street
Boston, MA 02110
pmastrocola@burnslev.com
drosenblatt@burnslev.com

/s/ Stephen E. Crowley
STEPHEN E. CROWLEY
Attorney for Defendants